

Application No.: 10/664,513
Resp. to Rest. Reqmt. of 8/17/05

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Docket No.: 416272003700

REMARKS

Reconsideration is respectfully requested. Claims 1-58 were originally presented in this application. Claims 1, 7 and 21 have been amended. Claims 1-58 remain pending in the present application.

Claims 1, 7 and 21 have been amended to correct and clarify antecedent basis. Support for these amendments may be found throughout the Specification and Claims, as originally filed. No new subject matter has been added.

Applicant respectfully traverses the restriction of claims 1-58 under 35 U.S. C. § 121. In the Office Action of August 17, 2005, the Examiner required restriction between the following groups: Group I, Claims 1-29; Group II, Claims 30-38; Group III, Claims 39-47; Group IV, Claims 48-51; Group V, Claim 52; Group VI, Claim 53; Group VII, Claim 54; Group VIII, Claim 55; Group IX, Claim 56; Group X, Claim 57; or Group XI, Claim 58.

Further, the Examiner requires election of species in the following genres:

1) isotopically labeled precursor molecule, 2) living system, 3) mitochondrial molecule and 4) a drug agent.

In response, Applicant provisionally elects Group I, claims 1-29, drawn to a method for assessing metabolic fitness or aerobic demand of a living system, with traverse. Applicant respectfully submits that it would not be an undue burden on the Office to search all of the pending claims.

Applicant also respectfully requests that the requirement for election of species be withdrawn, as a search of all the species claimed would not present an undue burden on the Office. However, should the required election be maintained, Applicant further provisionally elects the following species in Group I, with traversal:

1) Isotopically labeled precursor molecule: Applicant elects the species "²H-labeled glucose".

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- 2) Living system: Applicant elects the species "animal".
- 3) Mitochondrial molecule: Applicant elects the species "deoxyribonucleic acid".
- 4) Drug agent: not present in Group I.

Applicant's election is made without prejudice. As noted by the Examiner, upon the allowance of a generic claim, Applicant will be entitled to consideration of claims to additional species, provided that all claims to each additional species are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141.

For the reasons stated above, Applicant respectfully requests that the restriction requirement and the required election be withdrawn.

Applicant expressly reserves the right under U.S.C. § 121 to file a divisional application with claims directed to the nonelected subject matter during the pendency of the application, or an application claiming priority from this application.

In the unlikely event that the transmittal form is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing (416272003700). However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: September 19, 2005

Respectfully submitted,

By Michael R. Ward
Michael R. Ward

Registration No.: 38,651
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
Tel: (415) 268-6237